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IMPLEMENTATION OF THE INTERNATIONAL COVENANT ON ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Written statement submitted by FIAN International, a non-governmental organization in consultative status with ECOSOC (Roster)

The Secretary-General has received the following written statement, which is distributed in accordance with Economic and Social Council resolution 1988/4.

[29 April 1994]

FIAN International would like to submit to the Committee on Economic, Social and Cultural Rights (CESCR) parallel information to the initial report of Kenya under Article 11 of the Covenant on the right to adequate food. There are numerous problems with the right to adequate food in Kenya. This parallel information focuses on just a few situations, involving what we consider severe breaches of the right to food.

The following cases are related to pastoralists, to smallholders and in particular to the role of the government authorities in the massive displacements linked with so-called ethnic strife.

FIAN has received a growing amount of information on a large number of expulsions and forced evictions causing the destruction of the livelihood of smallholders of certain ethnic groups. According to FIAN's information, the Government failed in its obligation to protect the victimized or vulnerable

persons. There are even reports claiming that government authorities instigated or supported the groups of those "tribal warriors", who are responsible for the respective expulsions. This situation, destroying the livelihood of tens of thousands of people, along with the loss of human lives, requires a careful international human rights fact finding and monitoring as to the role of the Kenyan Government.

FIAN is also concerned about reports concerning the lack of support and relief for the victims of these expulsions. These omissions constitute a failure of the Kenyan Government to fulfil these persons' right to food.

We hope that the CESCR will be able to encourage the Kenyan Government to return to a policy in line with its international obligations under the Covenant.

FORCED EVICTIONS IN THE RIFT VALLEY

According to the information available to FIAN International, the Rift Valley is the location of repeated violations of the right to feed oneself, especially since the last pre-election time in 1991. The following breaches have been reported to FIAN International, consisting of expulsions and other cases where the right to feed oneself of smallholders was neither respected nor protected by the Government. According to our most recent information, some 300,000 people (mainly smallholders of various ethnic groups) have been expelled from their territories in the recent past. In many cases the Government seems to be involved in these forced evictions. In most of the others it is at least tolerating them.

1. Nandy district, Rift Valley:

Different ethnic groups lived traditionally in this area until the early 1990s. Then armed groups - mainly composed of Kalenjin warriors - the ethnic group of the President and the major responsible group for evicting other ethnic groups in the Rift Valley - started attacking settlers from other ethnic groups in the Rift Valley. Since then, farms have been burnt down repeatedly in a systematic way, families have been driven off their land and many people have been killed.

These events must be judged as breaches of the Kenyan constitutional guarantee to the right of ownership and private property in every part of the country and for every individual. At the same time, the Government of Kenya fails to comply with its obligations to protect the economic human rights of these people. When expelled, the smallholders lose their opportunity to feed themselves. In fact no protection has been offered when the violent actions were perpetrated. There are some indications to believe that the Government has full knowledge about these evictions and that the Government is tolerating them. As a reason for this discrimination it was claimed that the Government wants to ensure that no multi-party evolution is happening. It resulted in a worsening of the food situation for many smallholders of various ethnical groups.

2. In the Nakuru District area, 40,000 persons were displaced, and many bags of food (maize, beans, potatoes) were destroyed. Cattle, sheep and goats were also killed. These events constitute a failure of the Government to protect the economic human rights of the expelled persons. Besides the violent expulsions, a lot of nutritional resources of the inhabitants were deliberately destroyed.

The International Secretariat of FIAN has also been informed about further cases within the Rift Valley area, where similar breaches in the respect for and protection of economic human rights of the population occur.

BREACHES OF KENYA OF THE HUMAN RIGHT TO FEED ONESELF

As a State party of the Covenant on Economic, Social and Cultural Rights, Kenya is dutybound to the obligations concerning the right contained in the Covenant including the right to adequate food. The state obligations are linked to a certain normative status of human beings formulated in the

normative content of the right. The normative status linked to the right to food can be formulated as "having access to adequate food in human dignity". For every human right there are three levels of corresponding state obligations:

The States have

(1) To respect the normative status where it is attained, i.e., States must not destroy the normative status. In the context of the right to adequate food, the obligation to respect means that the State must not take any measures destroying existing access to food of certain parts of the population or certain individuals.

(2) To protect the normative status where it is attained against being destroyed by third parties. In the context of the right to adequate food, the obligation to protect existing access to food against destruction by third parties, e.g., the State has to defend the land's smallholders and indigenous people from encroachments by big companies and large landowners.

(3) The situation is different for those persons or groups lacking access to adequate food. For these citizens the member States of the Covenant on Economic, Social and Cultural Rights are obliged to strive for complete fulfilment to the maximum of their available resources. This is done primarily through political measures and the creation of a legal framework, such as laws on land ownership and agrarian reform, employment guarantee measures, minimum wages etc.

In the case of Kenya we would like to draw special attention to breaches of the obligation to respect and to protect the right to feed oneself affecting a large number of people. Much hunger and scarce nutritional opportunities are in Kenya caused by evictions or displacements of ethnic groups. The Government fails to prevent these forced evictions. In several cases they seem to be instigated and supported by the Kenyan Government itself.

3. Enosoubukia, Narok District: Reportedly 30,000 people have been evicted from their legally owned farms. Their houses, livestock and all their possessions were looted and the remains set on fire. The smallholders are now refugees in other areas around Naivasa.

4. Kapenguria, Rift Valley: At this location 10,000 people have been reportedly evicted with the same consequences as in Enosoubukia.

5. Likono, Mombasa District: Such violent expulsions do not only take place in the Rift Valley area. In this case, around 20,000 persons were violently expelled and must now live in church compounds. Even there, the people are afraid that the Government will use further violent means to evict the people again, acting clearly against its human rights obligations.

In general terms, the Government offered no proper rehabilitation to the 300,000 people who have been reportedly evicted. Instead, they were generally settled in camps without adequate facilities to meet their basic supply of food. Moreover, they do not have any indication that they can return to their

farms in future and they are afraid that they have lost their means of subsistence in the cases where their farms are still occupied by warriors.

The cases of expulsions in the Rift Valley area must be seen as large scale forced evictions and gross violation of the human right to feed oneself in Kenya.

BREACHES OF LAND RIGHTS

The International Secretariat of FIAN has also received information about oppression and denied access to land through adjudication works in other parts of the country:

6. The Maasai of Loodo-Ariak Community in the Rift Valley province are semi-nomadic pastoralists, most of them illiterate. In the 1970s an adjudication work started in order to divide all parts of the area into individual ranches. Their traditional land rights have been replaced by a registered subdivision of land, an evaluation and a sale of the territories. Most of the traditional owners have lost their property because of their lack of knowledge of the changing legal circumstances. When the process was finalized in the late 1980s it had resulted in the loss of the access to land for most of the members of the community.

Through this adjudication work, 20,000 ha. of land were sold to a few rich settlers, who had the necessary knowledge about the legal changes and managed to take advantage of it. Two thousand Loodo-Ariak families were expelled from their traditional territories and lost all their means of subsistence. The Government failed to respect the customary land rights of the Loodo-Ariak community by introducing new property laws that strongly differed from their traditional land property patterns without safeguarding the affected community's rights to feed themselves.

The Loodo-Ariak were neither properly instructed about the changes in the legal status nor were they given any effective opportunity to acquire their territories legally. The Loodo-Ariak community became landless and no adequate resettlement was offered to them. Since that time the Loodo-Ariak are forced to seek external legal assistance to have their rights respected.

The case of the Loodo-Ariak can be seen as an example of the impact of a macro policy measure (privatization), which has been implemented by neglecting the human rights obligations which exist. This case illustrates the failures of the Government to act according to its obligations under the International Covenant on Economic, Social and Cultural Rights. It may be considered as one example of the breaches occurring through the legal system itself and does apparently also affect other Maasai groups. The International Secretariat of FIAN has also been informed about a further case of such breaches.

7. In Kericho, Rift Valley, 680 smallholders who had bought land from white settlers some 30 years ago were evicted by the District Commissioner. They were suddenly called "illegal squatters", even though they had paid for the land in former times. Their homes were destroyed by bulldozers. They lost their means of subsistence and had to find shelter in schools and church compounds.

FIAN is very concerned about violations of the right to feed oneself in Kenya including in particular the plight of the pastoralists and smallholders. The Government fails to undertake the necessary steps for the implementation of the right to adequate food. The Government is dutybound to establish a system of land rights that respects the existing access of citizens to productive resources, especially land. It must enable its legal system to protect the rights of the especially vulnerable groups, like pastoralists, smallholders, ethnic groups etc. and it is obliged to implement policies which help to guarantee access to adequate food at the household level. It has to use the maximum of its available resources to reach this end.